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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. **2010-473**

12 **TRACEY MACEDO THIEDE aka**  
13 **TRACEY RENEE MACEDO THIEDE aka**  
14 **TRACEY RENEE MACEDO**  
1833 Glasgow Avenue  
Cardiff by the Sea, CA 92007

**A C C U S A T I O N**

15 **Registered Nurse No. 430512**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Complainant Louise R. Bailey, M.Ed., RN, (Complainant) brings this Accusation  
21 solely in her official capacity as the Interim Executive Officer of the Board of Registered Nursing  
22 (Board), Department of Consumer Affairs.

23 2. On or about August 31, 1988, the Board issued Registered Nurse License Number  
24 430512 to Tracey Macedo Thiede, also known as Tracey Renee Macedo Thiede, also known as  
25 Tracey Renee Macedo (Respondent). Respondent's registered nurse license was in full force and  
26 effect at all times relevant to the charges brought herein and will expire on June 30, 2010, unless  
27 renewed.

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## JURISDICTION

3. Business and Professions Code (Code) section 2750 provides, in pertinent part, that the Board may discipline any licensee for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

## STATUTORY PROVISIONS

5. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct . . .

6. Code section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license . . .

7. Code section 2770.11 states:

(a) Each registered nurse who requests participation in a diversion program shall agree to cooperate with the rehabilitation program designed by the committee and approved by the program manager. Any failure to comply with the provisions of a rehabilitation program may result in termination of the registered nurse's participation in a program. The name and license number of a registered

nurse who is terminated for any reason, other than successful completion, shall be reported to the board's enforcement program.

(b) If the program manager determines that a registered nurse, who is denied admission into the program or terminated from the program, presents a threat to the public or his or her own health and safety, the program manager shall report the name and license number, along with a copy of all diversion records for that registered nurse, to the board's enforcement program. The board may use any of the records it receives under this subdivision in any disciplinary proceeding.

8. Code section 4060 states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer. Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

9. Code section 4324, subdivision (a), states:

Every person who signs the name of another, or of a fictitious person, or falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for any drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment in the state prison, or by imprisonment in the county jail for not more than one year.

10. Health and Safety Code section 11170 states that no person shall prescribe, administer, or furnish a controlled substance for her self.

11. Health and Safety Code section 11173 states, in pertinent part:

(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge . . .

12. Health and Safety Code section 11350 (a)(1) states, in pertinent part:

(a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or

paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of

1 Section 11055, or specified in subdivision (h) of Section 11056, or (2) any  
2 controlled substance classified in Schedule III, IV, or V which is a narcotic drug,  
3 unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian  
4 licensed to practice in this state, shall be punished by imprisonment in the state prison . . .

5 (1) For a first offense under this section, a fine of at least one thousand  
6 dollars (\$1,000) or community service. . .

#### 7 **COST RECOVERY**

8 13. Code section 125.3 provides, in pertinent part, that the Board may request the  
9 administrative law judge to direct a licensee found to have committed a violation or violations of  
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
11 enforcement of the case.

#### 12 **CONTROLLED SUBSTANCES AT ISSUE**

13 14. **Fentanyl** is a Schedule II controlled substance as designated by Health and Safety  
14 Code section 11055, subdivision (c)(8), and a dangerous drug per Business & Professions Code  
15 Section 4022. Fentanyl is used to treat pain.

#### 16 **DRUGS**

17 15. **Nubain** is a brand name for the generic drug **Nalbuphine** and is used to treat pain.

18 16. **Ultram** is a brand name for the generic drug **Tramadol** and is used to treat pain.

#### 19 **FIRST CAUSE FOR DISCIPLINE**

20 (Diversion, Possession, and

21 Self-Administration of Controlled Substances)

22 17. Respondent is subject to disciplinary action pursuant to Code section 2761,  
23 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762,  
24 subdivision (a), while employed as a registered nurse at Mercy Hospital in San Diego,  
25 Respondent diverted significant amounts of the controlled substance Fentanyl from her employer.  
26 Respondent also diverted significant amounts of the drug Nubain from her employer. Respondent  
27 began diverting controlled substances and drugs from Mercy Hospital in or around September of  
28 2001. Respondent continued to divert controlled substances and drugs from her employer until  
she was confronted at work and fired in or around February of 2002.

1 18. Respondent is subject to disciplinary action pursuant to Code section 2761,  
2 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762,  
3 subdivision (a), while employed as a registered nurse in Obstetrics at Palomar Medical Center in  
4 Escondido, Respondent diverted significant amounts of the controlled substances controlled  
5 substance Fentanyl from her employer. Respondent also diverted significant amounts of the drug  
6 Nubain from her employer. Respondent began diverting controlled substances and drugs from  
7 Palomar Medical Center in or around February of 2002. Respondent continued to divert  
8 controlled substances and drugs from her employer until she was confronted at work and then quit  
9 in or around October of 2003.

10 **Diversion of Controlled Substances:**

11 a. Respondent admitted to diverting significant amounts of the controlled substances,  
12 Fentanyl and Nubain from two different employers, Mercy Hospital and Palomar Medical Center  
13 which constitutes fraud, deceit, misrepresentation, or subterfuge, in violation of Health and Safety  
14 Code section 11173, subdivision (a). These medications were signed out by Respondent for  
15 patients but the medications were never administered to patients. Respondent admitted to taking  
16 the Fentanyl and Nubain for her own personal use.

17 **Possession of Controlled Substances:**

18 b. Respondent admitted to possession of Fentanyl and Nubain without legal  
19 authorization and without a valid prescription from a physician, dentist or other medical  
20 professional in violation of Code section 4060.

21 **Prescription of Controlled Substances:**

22 c. Respondent illegally obtained prescribed the controlled substances Fentanyl and  
23 Nubain for herself, as set forth above.

24 **Self-Furnishing of Controlled Substances:**

25 d. Respondent furnished Fentanyl and Nubain to herself without lawful authority as set  
26 forth above.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Use of Controlled Substances to an Extent or in a Manner**

3 **Dangerous or Injurious to Oneself and/or Others)**

4 19. Respondent is subject to disciplinary action pursuant to Code section 2761,  
5 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762,  
6 subdivision (b), in that while licensed as a registered nurse, Respondent used controlled  
7 substances, including, but not limited to Fentanyl and Respondent used drugs, including, but not  
8 limited to Nubain, to an extent or in a manner dangerous or injurious to herself and/or others as  
9 set forth above. Respondent admitted that she has drove while under the influence of controlled  
10 substances and alcohol and has cared for patients while under the influence of controlled  
11 substances and alcohol.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct - Use of Drugs and Alcohol While in Diversion and**

14 **Failure to Comply with the Rehabilitation Plan)**

15 20. Respondent is subject to disciplinary action pursuant to Code section 2761,  
16 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762,  
17 subdivision (b), in that while in the registered nurse diversion program MAXIMUS, Respondent  
18 used drugs, including, but not limited to, Ultram as well as alcohol.

19 21. Respondent enrolled in the registered nurse diversion program MAXIMUS on or  
20 about November 18, 2003.

21 22. On or about January 31, 2008, Respondent tested positive for the drug Ultram. As a  
22 result of Respondent testing positive for use of drugs while in the diversion program, the  
23 Diversion Evaluation Committee rescinded her February 1, 2008 successful completion date.  
24 Respondent was required to restart an intensive outpatient program.

25 23. On or about March 13, 2008, Respondent received a positive Ethyl Glucuronide test  
26 which indicated that she ingested alcohol within three to four days prior to the test. Respondent  
27 was required to go into an inpatient treatment facility for 30 days.

24. On or about September 15, 2009, Respondent missed a body fluid screening. The Diversion Evaluation Committee advised Respondent that there was no excuse for her missing a body fluid screening since she had been in the program since 2003. As a result, Respondent was unsuccessfully terminated from the registered nurse diversion program for failure to comply with the provisions of the rehabilitation plan and was determined to be a public safety risk.

## PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 430512, issued to Tracey Macedo Thiede, also known as Tracey Renee Macedo Thiede, also known as Tracey Renee Macedo;

2. Ordering Tracey Macedo Thiede, also known as Tracey Renee Macedo Thiede, also known as Tracey Renee Macedo to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED:

③ 29/10

*Louise R. Bailey*  
LOUISE R. BAILEY, M.D., RN  
Interim Executive Officer

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Interim Executive Officer  
Board of Registered Nursing  
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*Complainant*

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